

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>FLORA PADLEY</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 251,357
<b>ANW SPECIAL EDUCATION COOPERATIVE</b>	)	
Respondent	)	
AND	)	
	)	
<b>KANSAS ASSOCIATION OF SCHOOL BOARDS</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the March 26, 2002 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on October 8, 2002.

**APPEARANCES**

Carlton W. Kennard of Pittsburg, Kansas, appeared for claimant. Anton C. Andersen of Kansas City, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for a September 13, 1999 back injury, which allegedly occurred while claimant was bending over to change a diaper. Because claimant had undergone back surgery in December 1998 and had received a cortisone injection for back symptoms only days before the September 13, 1999 incident, one of the principal issues presented to Judge Frobish was whether claimant's alleged September 1999 accident caused either additional permanent injury or additional permanent impairment. In the March 26, 2002 Award, the Judge determined the September 13, 1999 incident only caused a temporary

aggravation of claimant's back complaints and, therefore, the Judge denied claimant's request for permanent disability benefits.

Claimant contends Judge Frobish erred. Claimant argues she sustained permanent injury as a result of the September 13, 1999 incident and requests the Board to grant her a work disability (a permanent partial general disability greater than the whole body functional impairment rating).

Conversely, respondent and its insurance carrier request the Board to affirm the Award. They argue Dr. Vito Carabetta's medical opinion that the September 13, 1999 incident only caused a temporary irritation of claimant's symptoms is the more persuasive medical opinion and, therefore, it should be adopted by the Board.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

The March 26, 2002 Award should be affirmed. The Board adopts the Judge's conclusion that claimant failed to prove that she sustained either a permanent injury or aggravation or permanent impairment as a result of the September 13, 1999 work-related incident.

In short, the Board agrees with the Judge that Dr. Vito Carabetta's medical opinions are more persuasive than those presented by Dr. Edward J. Prostic as Dr. Carabetta had the more accurate history of claimant's residual symptoms following her December 1998 back surgery. Further, claimant is a poor historian. Accordingly, Dr. Prostic was not aware of claimant's residual symptoms following the 1998 back surgery or that claimant had experienced several incidents between the December 1998 surgery and the September 13, 1999 work-related accident in which she aggravated her back symptoms. Claimant's medical history, however, indicates she was experiencing low back pain and right leg symptoms several months before the September 13, 1999 incident and had received a cortisone injection to her back only days before that incident at work. Finally, Dr. Prostic believed claimant had quit working for respondent due to her back condition when, in truth, she had given notice of her termination before the September 13, 1999 accident and had quit respondent's employment because of wage issues.

The Board concludes Dr. Carabetta's medical opinion that the September 13, 1999 incident only caused a temporary irritation of claimant's symptoms is supported by the greater weight of the evidence. Accordingly, the Board concludes claimant has failed to

prove that the September 13, 1999 incident caused either permanent injury or permanent impairment, or otherwise permanently aggravated or permanently accelerated her preexisting low back condition. The request for permanent disability benefits should be denied.

**AWARD**

**WHEREFORE**, the Board affirms the March 26, 2002 Award entered by Judge Frobish.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2002.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Carlton W. Kennard, Attorney for Claimant  
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier  
Jon L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation